

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES,

-v-

JOSEPH SPENCER,

Defendant.

04-CR-1156 (PAE)

ORDER

PAUL A. ENGELMAYER, District Judge:

The Court has reviewed counsels' letters regarding, *inter alia*, Mr. Spencer's application for compassionate release; the BOP's apparently sudden and heretofore unannounced release of Mr. Spencer into New York City at apparently 3 a.m. in the middle of a pandemic; Mr. Spencer's travel thereafter to his family in Florida; the BOP's determination thereafter that it had erred in releasing Mr. Spencer; and its demand that the Court order Mr. Spencer immediately to surrender. *See* Dkts. 75–77.

The Court is, to say the least, appalled by the lapses of competence, forethought, and sensitivity seemingly reflected in the BOP's recent actions and demand. Before determining whether to grant Mr. Spencer's application for compassionate release and/or whether to direct his return to custody, the Court intends instead to undertake a searching factual review of the events in question and of the BOP's plans with respect to Mr. Spencer.

The Court accordingly directs that, by Friday, June 26, 2020, detailed sworn affidavits be filed on the docket of the case from responsible and percipient officials of the BOP. These are to address: (1) the process by which the BOP determined to release Mr. Spencer, including the names of the individuals who made that determination; (2) the concrete steps that the BOP took in advance of Mr. Spencer's release to assure that this release and ensuing return to his family

was conducted in a careful manner consistent with minimizing the risk to him and others of exposure to COVID-19, including the names of the individuals who participated in that process; (3) the process by which the BOP later determined that it had released Mr. Spencer in error, and by which the BOP determined that it was appropriate to seek Mr. Spencer's return to custody, including the names of the individuals who made that determination; and (4) the concrete steps that the BOP is prepared to take, in the event that the Court directs that Mr. Spencer be returned to custody, to assure that the risks to him and others presented by COVID-19 are minimized, and the names of the individuals responsible for that determination; as to this point, the Court expects the BOP to concretely address, *inter alia*, the travel arrangements it anticipates with respect to Mr. Spencer's return as well as the manner in which he would be tested and housed upon his return.

Upon review of these affidavits, the Court will determine whether to commission in-person testimony from relevant BOP officials, or whether it is in position to rule on the papers.

For avoidance of doubt, pending further order, Mr. Spencer is to be on home detention under the supervision of the Probation Department. The other terms of supervised release set out in the judgment in this case govern. The Government is to confer forthwith with the Probation Department as to whether an order is necessary to memorialize the parameters of home detention; if so, the Government, defense, and Probation Department are to confer regarding those terms and to promptly file a proposed such order with the Court. In light of the restrictions on Mr. Spencer's liberty presented by home detention, the Court expects to treat Mr. Spencer's time spent under home detention as counting towards any remaining term of imprisonment he may be determined to have.

SO ORDERED.

A handwritten signature in blue ink that reads "Paul A. Engelmayer". The signature is written in a cursive style with a horizontal line underneath it.

PAUL A. ENGELMAYER
United States District Judge

Dated: June 22, 2020
New York, New York